

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK  
JAN 16 2009  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                            |   |                            |
|----------------------------|---|----------------------------|
| PAMELA B.,                 | ) |                            |
|                            | ) |                            |
| Appellant,                 | ) | 2 CA-JV 2008-0098          |
|                            | ) | DEPARTMENT A               |
| v.                         | ) | <u>MEMORANDUM DECISION</u> |
|                            | ) | Not for Publication        |
| ARIZONA DEPARTMENT OF      | ) | Rule 28, Rules of Civil    |
| ECONOMIC SECURITY,         | ) | Appellate Procedure        |
| KIERRA B., and MALACHI B., | ) |                            |
|                            | ) |                            |
| Appellees.                 | ) |                            |
|                            | ) |                            |

---

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD 2007-00004

Honorable Joseph R. Georgini, Judge

AFFIRMED

Harriette P. Levitt

Tucson  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Pennie J. Wamboldt

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

ESPINOSA, Judge.

¶1 Pamela B. challenges the juvenile court's order terminating her parental rights to her son, Malachi B., and her daughter, Kierra B., on grounds of neglect; inability to

parent due to chronic substance abuse; and court-ordered, out-of-home placement for nine months or longer. *See* A.R.S. § 8-533(B)(2), (3), (8)(a). The court also found that termination of Pamela’s parental rights was in the children’s best interests. Pamela contends the order was not supported by sufficient evidence.

¶2 We will not disturb a juvenile court’s order terminating a parent’s rights unless the order is clearly erroneous. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶4, 53 P.3d 203, 205 (App. 2002). We view the evidence in the light most favorable to upholding the factual findings upon which the order is based. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶20, 995 P.2d 682, 685 (2000). We affirm the termination order in this case.

¶3 The Arizona Department of Economic Security (ADES) removed the children from Pamela’s custody in January 2007 after receiving a report that she had been neglecting them and “using drugs.” Pamela “submit[ted] to the issue of dependency.” The juvenile court adjudicated the children dependent as to her and approved a case plan of family reunification that called for Pamela to participate in a psychological evaluation, counseling, and visitation. Initially, Pamela complied with the case plan tasks; however, by the date of the permanency planning hearing in November 2007, she had stopped visiting her children, her whereabouts were unknown, and she had tested positive for methamphetamine on two occasions.

¶4 Pamela had also undergone a psychological evaluation that revealed a history of drug use and mental health issues negatively affecting her ability to parent. She reported to the evaluator that she had begun using drugs and alcohol at age fifteen, had “eventually

graduated to the use of methamphetamine,” and “want[ed] to smoke herself to death on methamphetamine.” The evaluator concluded “the children would be at risk of maltreatment if left under Pamela’s care”; that Pamela’s “numerous personal, interpersonal, and substance abuse issues . . . require[d] significant psychological intervention”; and that she was “in no condition to parent any child . . . and w[ould] not be able to [do so] in the foreseeable future.” The court changed the case plan goal to severance and adoption and directed ADES to file a motion to terminate Pamela’s parental rights.

¶5 Pamela appeared at an initial pretrial conference on the motion for termination in February 2008 but did not appear for the final pretrial conference or the April termination hearing. At the hearing, the case manager testified Pamela had been “inconsistent” with services and visitation. At some point, she had apparently stopped attending counseling, and the case manager testified she had been “unable to stay drug free” or live a “drug-free lifestyle.” Although she had had six negative drug tests following her last positive test in May 2007, she had not submitted to testing after June 14, 2007. The case manager further stated that both children were adoptable and would benefit from termination by achieving stability and permanency. The children were thriving in foster care and “no longer ha[d] a significant attachment to their mother.” Malachi was in a potential adoptive placement.

¶6 On appeal, Pamela challenges the sufficiency of the evidence supporting the statutory grounds on which the juvenile court based its termination order. We do not reweigh the evidence but determine only whether any reasonable evidence supports the court’s findings. *See Michael J.*, 196 Ariz. 246, ¶ 20, 995 P.2d at 686. Statutory grounds for termination must be proven by clear and convincing evidence. A.R.S. § 8-537(B); *Mary*

*Ellen C. v. Ariz. Dep't of Econ Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999). But we will affirm an order terminating a parent's rights so long as at least one of the statutory grounds has been established by sufficient evidence. *See In re Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 575, 869 P.2d 1224, 1228 (App. 1994).

¶7 Ample evidence supported the juvenile court's determination that the children had been placed out of the home for more than nine months and that Pamela had "substantially neglected or wilfully refused to remedy the circumstances" that caused the children to remain in those placements. § 8-533(B)(8)(a); *see also Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 22, 152 P.3d 1209, 1213 (App. 2007). Nothing in the record suggests she had made any progress toward addressing the issues identified in her psychological evaluation—chiefly her struggle with methamphetamine abuse and her mental health issues—that prevented her from adequately parenting her children. Yet, without explanation or apparent obstacle, she simply stopped attending counseling and submitting to required drug testing. These actions are more than sufficient evidence of substantial neglect or willful refusal to remedy the need for her children's out-of-home placements. Therefore, finding termination warranted under § 8-533(B)(8)(a), we need not address the adequacy of the evidence supporting the court's findings on the other statutory grounds for termination. *See Marina P.*, 214 Ariz. 326, ¶ 22, 152 P.3d at 1213.

¶8 The record also supports the juvenile court's finding that termination of Pamela's parental relationship with her children was in the children's best interests. The court's finding need only be supported by a preponderance of the evidence that the children "would derive an affirmative benefit from termination or incur a detriment by continuing in

the relationship.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004); *see also* § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). The requisite benefit from termination may be shown by evidence of a current adoption plan or even evidence that a child is adoptable, *see Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004), and the court may consider evidence that a child’s present placement is meeting the child’s needs, *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994). As noted above, evidence here established that both children were adoptable, were thriving in foster care, and would benefit from the permanency and stability of adoption; Malachi was in a potential adoptive placement; and the children, who were only seven and seventeen months old when removed from Pamela’s custody, had not seen her since the fall of 2007 and no longer had a significant attachment to her.

¶9 The juvenile court’s order terminating Pamela’s parental rights to Malachi and Kierra is affirmed.

---

PHILIP G. ESPINOSA, Judge

CONCURRING:

---

JOHN PELANDER, Chief Judge

---

JOSEPH W. HOWARD, Presiding Judge